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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland

Addendum

Information provided by the United Kingdom of Great Britain and Northern Ireland in follow-up to the concluding observations*

[Date received: 30 November 2015]

* The present document is being issued without formal editing.

Please recycle

The United Kingdom is grateful for the work of the Committee and for the Committee's observations and recommendations. Please find as follows the response regarding the Committee's recommendations regarding legal aid and access to justice.

England and Wales

To ensure effective access by women, in particular women victims of violence, to courts and tribunals

1. The Ministry of Justice is responsible for the running and reform of the justice system in England and Wales, including providing access to justice through courts, tribunals and the provision of legal aid. The Ministry of Justice works with other Government departments and agencies to administer the justice system as a whole, including Her Majesty's Courts and Tribunals Service (HMCTS) and the Legal Aid Agency (LAA).

2. The UK Government is firmly committed to providing effective access to justice for all those who require it, irrespective of gender. The legal aid scheme plays a vital role in this regard, although "access to justice" is a broader concept and should not simply be equated to access to government-funded legal advice in all possible cases.

Legal aid

3. The availability of legal aid in England and Wales is set out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and underlying regulations, which came into force on 1 April 2013.

4. Civil legal aid is available where the matter is within the scope of the civil legal aid scheme, subject to statutory tests of the applicant's means and the merits of the case, which are known as the eligibility tests. The LASPO reforms to the scope of legal aid were designed to ensure access to public funding in those cases that most require it, encourage early resolution of disputes instead of unnecessary conflict, and to improve the affordability of legal aid provision. In determining areas for legal aid funding, the UK Government took into account the importance of the issue, the litigant's ability to present their own case, whether alternative sources of funding existed, and whether other routes to resolution were available. The UK Government also took into account domestic, European and international legal obligations, including the European Convention on Human Rights (ECHR). Whilst no one factor was determinative, the UK Government considered very carefully whether litigants bringing proceedings were likely to be particularly vulnerable (either as a result of their own characteristics or the traumatising circumstances in which the proceedings are being brought). As a result, LASPO prioritizes civil legal aid for a number of matters where women, in particular, may require it.

5. The UK Government is absolutely clear that victims of domestic violence must have access to the help that they need. Legal aid for the purpose of obtaining urgent protection (protective injunctions) is available. Prescribed forms of evidence of domestic violence are not required for legal aid applications in these cases and financial eligibility limits can be waived. The court application fee for such protection has been removed, to ensure that there are no unnecessary barriers

between people and the help that they need. Legal aid is also available in relation to EU and international child custody and maintenance agreements.

6. Legal aid funding for private family law cases, such as divorce, child custody arrangements and financial matters, has been restricted to make sure that funding is available for those that need it most. Where there is objective evidence of domestic violence or child abuse, legal aid remains available. This is because the UK Government has prioritized protecting victims of domestic violence from the potential disadvantage of facing their abuser in court.

7. The UK Government has kept the evidence requirements under review, completing an early review of the evidence of domestic violence required to apply for legal aid funding in private family law matters. In doing so the UK Government engaged Women's Aid, the Association of Chief Police Officers and other representative organisations. As a result of the review, the UK Government made a number of changes to the evidence requirements in April 2014, extending the forms of evidence accepted and taking measures to make them easier to attain. Domestic Violence Protection Orders, police bail and a binding over order for a domestic violence offence were all added, as well as evidence of a stay at a refuge — or that a stay had been denied due to lack of available accommodation. The UK Government also amended the legislation to make sure that, once a particular form of legal aid has been granted, no further application is needed in order to receive legal representation for that case.

8. The UK Government has worked with professional organisations representing GPs and other healthcare professionals, as well as the police, to ensure that they are equipped to provide evidence in a suitable format and with the appropriate urgency. Full guidance and template letters have been produced. The Ministry of Justice and the LAA continue to work with evidence-providing organisations to make sure evidence is easy to obtain and charges are minimized. Further changes were made in July 2015, including operational improvements and the addition of new offences to the list of domestic violence and child abuse offences. The situation is being kept under review.

9. Where a matter is outside of the scope of the civil legal aid scheme, an applicant may apply for exceptional case funding. Exceptional case funding is available, subject to means and merits, where failure to provide legal aid would breach the applicant's rights under ECHR or EU law (or in light of the risk of a breach, it is appropriate to provide legal aid). Revised guidance was published in June 2015 to take into account recent court judgments which clarify the extent to which legal aid is required under the ECHR.

10. During the previous Parliament, the UK Government proposed to introduce a residence test for applicants for civil legal aid. The test would comprise two limbs. First, the individual would need to be lawfully resident in the UK, Crown Dependencies or British overseas territories at the time they apply for civil legal aid and secondly, to have been lawfully resident there for a continuous period of 12 months in the past. The civil legal aid residence test was successfully challenged by way of judicial review. The UK Government was granted permission to appeal; the appeal was heard in the Court of Appeal in October 2015. The UK Government was successful in the Court of Appeal, with judgment handed down on 25 November 2015.

11. The UK Government continues to believe that individuals should have a strong connection with the UK to benefit from the civil legal aid scheme.

12. In developing the proposed residence test, the UK Government took into consideration that legal aid is specifically provided in certain circumstances for victims of domestic violence and forced marriage and made exceptions to the residence test for individuals in these groups, in recognition of the fact that they are particularly in need of legal aid on these matters. There were also other exceptions from the proposed residence test for specific types of cases, which may also be relevant for women. These include exceptions for victims of human trafficking in relation to certain damages, compensation and immigration claims as well as detention cases and challenges to the lawfulness of detention by way of judicial review. Any person excluded from civil legal aid under the residence test would be able to apply for exceptional case funding. Exceptional case funding would have continued to be available where failure to provide legal aid would breach the applicant's rights under the ECHR or EU law (or, in the light of the risk of a breach, it is appropriate to provide legal aid).

Judicial review

13. Judicial review plays an important role in holding the Government to account and is a mechanism through which women have effective access to the courts. The UK Government has targeted legal aid resource in England and Wales at judicial review cases where it is needed most so that cases of merit can be pursued. Reform has also taken place to make sure that judicial reviews can proceed quickly to a final resolution with proportionate costs for all involved. While undertaking reform, the UK Government sought evidence of equalities impacts. Impact Assessments produced in relation to judicial review reform noted that some claimants and third parties may lose out from quicker case resolution if they had an interest in government decisions being delayed. There is no evidence, however, to suggest that this will affect women victims of violence disproportionately to other claimants.

Court and tribunal fees

14. On 11 June 2015, the UK Government announced the commencement of a post-implementation review of the introduction of employment tribunal fees, which apply in England, Wales, Scotland and Northern Ireland. The intention is for the review to be completed later this year. This review will include an examination of whether there has been a disproportionate impact on women, in particular whether employment tribunal fees are a bar to women bringing meritorious claims.

15. The UK Government enables effective access to courts and tribunals through a fee remissions system, so that those unable to afford fees are not denied access. Eligibility for a fee remission is based on an individual's ability to pay. The remissions scheme is targeted towards those in vulnerable households on low incomes who are in receipt of certain state benefits.

Support for victims

16. The Code of Practice for Victims' of Crime (the "Victims' Code") outlines the information and services to be provided to victims of crime, including female victims, by criminal justice agencies in England and Wales. Victims of domestic violence or sexual offences are also entitled to receive an enhanced level of services

under the Victims' Code. This includes quicker updates on the status of their case and to receive information on referral to pre-trial therapy or counselling where appropriate and available. The Code also entitles victims to make a Victim Personal Statement (VPS) which allows the victim to tell the court how the crime has personally affected them.

17. There are a number of services that are nationally commissioned including support for female victims of rape which includes historic victims of childhood sexual abuse (CSA). In 2015/16 Ministry of Justice allocated funding of £4.7m to 86 female rape support centres to provide direct services such as counselling, plus an uplift of £2.15m for direct support for victims of CSA. There are non-statutory services for women and girls affected by violence which the Ministry of Justice does not fund, including 250-300 Independent Sexual Violence Advisers, of which 87 are part-funded by the Home Office (c£1.72m).

Support for witnesses

18. All vulnerable or intimidated witnesses who give evidence to the court have the right to ask for special measures to be put in place. These include giving evidence from behind a screen, by video link within the court building, or at a remote site away from the court. This means the witness does not have to face the defendant or their supporters in the courtroom.

To continuously assess the impact of the reforms of legal aid on the protection of women's rights

19. The Ministry of Justice and LAA continue to monitor the operation and expenditure of the legal aid scheme and the UK Government has committed to undertake a post-implementation review of LASPO within 3-5 years of implementation.

20. Where issues or problems have been identified with the legal aid scheme ahead of this review, these have been addressed. The UK Government has already taken significant steps to provide better information to assist parties when they go to court in England and Wales through the Litigant in Persons Support Strategy. As part of this, the UK Government announced a new £2m package of support for separating couples and parents aimed at avoiding expensive and confrontational courtroom battles in October 2014. The new strategy, which has been led by the advice, voluntary and pro bono sectors, builds on domestic and international advice and evidence. The strategy maximizes the provision of support to litigants in person, and in particular prioritizes the provision of legal support, through the co-ordination of local support and expertise via the Personal Support Unit, the Citizens Advice Bureau, pro bono providers and local law clinics. The strategy is already seeing results with more support units opening in courts across England and Wales, additional clinics are increasing the supply of initial legal advice, and greater online information and materials are now available.

21. In addition, as set out above, the UK Government expanded the list of evidence that can be provided when applying for legal aid for domestic violence and has amended the exceptional case funding guidance to take into account new case law.

To protect women from informal community arbitration systems, especially those that violate their rights under the Convention

22. The UK Government is committed to upholding the rule of law and Britain has a proud tradition of promoting and upholding women's rights. There are some who use their position in communities, to advocate a secondary and inferior role for women, which denies them equal access to education, limits their ability to pursue employment, isolates them socially, and limits their access to justice. The UK Government is clear that all rules, practices and bodies — including systems of alternative dispute resolution — must operate within the rule of law in the UK and in compliance with the ECHR.

23. Individuals involved in informal arbitration have the right to refer to the UK courts at any point, particularly if they feel pressured or coerced to resolve an issue in a particular way. Certain types of disputes, such as disputes over the custody or welfare of children, cannot be arbitrated and can only be decided by the courts.

24. The Government is undertaking a range of initiatives to facilitate and support equality for all women, to raise awareness of their rights, and to achieve more integrated communities. Our programmes and projects include an investment of £8 million over three years to support 33,500 isolated adults to learn English. The rollout of the programme began during 2013/2014. The English language programme gives the most isolated in our communities the chance to develop their language skills so that they can take a more active role in wider society. A further £8 million has been spent since 2011 on the Near Neighbours programme to support over 994 local projects that bring different faith and ethnic groups together, benefiting over 750,000 local people. Many of these projects give vulnerable groups, such as isolated women, opportunities to come together and share knowledge and help each other, while strengthening their local communities. The Muslim Marriage Working Group, coordinated by the Ministry of Justice, has been established to specifically consider what can be done to help address the issue of Muslim women who are left without legal protection by having non-legally valid religious marriages.

Scotland — Contribution from the Scottish Government

25. The effects of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 highlighted do not apply in Scotland. The range of matters for which legal aid is available in Scotland has not been reduced. Women are able to access legal aid, including for those matters listed by the Committee, without having to provide proof of abuse. A residence test for legal aid has not been proposed in Scotland.

26. The Scottish Government has committed to abolishing the fees for employment tribunals, believing these to be a barrier to women accessing justice, with the additional powers due to come to the Scottish Parliament through the Scotland Bill.

27. The Scottish Government is investing an additional £20m over the next three years (2015-2018) to drive forward innovation and improvement within the justice system, tackle perpetrators and increase public awareness of violence against women. This includes doubling the funding for local rape crisis centres to support victims of sexual violence. Additional funding is also being invested in advocacy

services for women who have experienced or are experiencing domestic abuse, including up to £215,000 funding through the Scottish Legal Aid Board to support the Scottish Women's Rights Centre, which offers free legal information and advice to women survivors of gender based violence, including a national helpline.

Northern Ireland — Contribution from Northern Ireland Assembly

28. In Northern Ireland, the Department of Justice (DOJ) has advised that the specific concerns expressed by the Committee relate to the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in England and Wales. As this Act does not apply to Northern Ireland, the potential impacts will not occur in Northern Ireland. When considering reform in this area DOJ looked very carefully at developments in other jurisdictions. Although DOJ is planning some reform to scope, legal aid will remain available for victims of domestic violence.

29. Since 2010 the Legal Services Agency Northern Ireland has operated a Domestic Violence Scheme which dis-applies the upper limit in the financial regulations. This allows an applicant to gain immediate access to the Magistrates' Court to apply for the protection of a Non-Molestation Order, even in circumstances where they may normally be assessed as being over the upper income limit to receive legal aid.

30. Legal Aid in Northern Ireland continues to be routinely available to female victims of violence. Any reforms in these areas are only introduced after public consultation and assessment of the potential impact. Mechanisms to monitor the impact of any reforms after they have been introduced will also be put in place.